

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICRONEL AG,	:	X
	:	
Plaintiff,	:	
	:	
-v.-	:	
	:	
INTERNATIONAL INDUSTRIAL	:	
DEVELOPMENT ORGANIZATION,	:	
INC., <u>et al.</u> ,	:	
	:	
Defendants.	:	
	:	X

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DATE FILED: <u>3/29/12</u>

REPORT AND
RECOMMENDATION

11 Civ. 7864 (BSJ) (JLC)

JAMES L. COTT, United States Magistrate Judge.**To the Honorable Barbara S. Jones, United States District Judge:**

By Order of Reference dated December 22, 2011, the Honorable Barbara S. Jones referred this matter to me for general pretrial supervision. (Dkt. No. 4). The docket sheet in this action reflects that on November 3, 2011, Plaintiff filed a Complaint and the Clerk issued a Summons as to Defendants International Industrial Development Organization, Inc., Micronel U.S., LLC, and S. William Linko, Sr. (Dkt. No. 1). Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, Plaintiff was required to serve the Summons and Complaint on Defendants no later than 120 days upon issuance of the Summons, or in this case, by March 2, 2012. By Order dated March 9, 2012 (Dkt. No. 5), I directed Plaintiff to show good cause by March 22, 2012 for the failure to serve the Summons and Complaint on Defendants.

To date, there has been no proof of service filed with respect to any of the Defendants. Nor has Plaintiff responded to the Court's order to show cause for failure to serve the Summons and Complaint. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that

defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The 120-day period permitted under Rule 4(m) has expired, and Plaintiff has not shown good cause for the failure to serve the Summons and Complaint. Nor has Plaintiff made any application for an extension of time either to respond to the Court's order to show cause or to effectuate service of process.

For these reasons, and because this is not a case in which the Court should exercise its discretion to grant an extension in the absence of good cause, see Zapata v. City of New York, 502 F.3d 192 (2d Cir. 2007), I recommend that the Complaint be dismissed without prejudice pursuant to Rule 4(m).

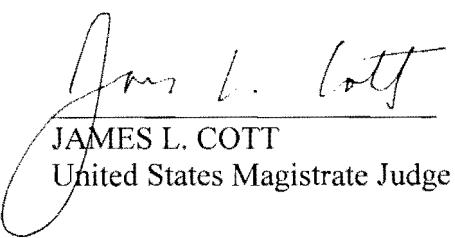
PROCEDURE FOR FILING OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections, and any responses to such objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Barbara S. Jones and to the chambers of the undersigned, United States Courthouse, 500 Pearl Street, New York, New York, 10007.

Any requests for an extension of time for filing objections must be directed to Judge Jones. **FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW.** See Thomas v. Arn, 474 U.S. 140 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010) (citing Cephas v. Nash, 328 F.3d 98, 107 (2d Cir. 2003) and Mario v. P & C Food Mkts., Inc., 313 F.3d

758, 766 (2d Cir. 2002)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.

Dated: New York, New York
March 29, 2012



JAMES L. COTT
United States Magistrate Judge